

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

NICOLE DAUGHERTY,	:	APPEAL NO. C-150621
		TRIAL NO. A-1303453
Plaintiff-Appellee,	:	
		<i>JUDGMENT ENTRY.</i>
vs.	:	
TWIN TOWERS,	:	
Defendant-Appellant,	:	
and	:	
STEPHEN BUEHRER,	:	
ADMINISTRATOR, OHIO BUREAU		
OF WORKERS' COMPENSATION,	:	
Defendant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Twin Towers appeals, following a bench trial, from the trial court's judgment granting plaintiff-appellee Nicole Daugherty the right to participate in the workers' compensation fund for the additional conditions of annular tears at L4-L5 and L5-S1, epidural lipomatosis, and degenerative disc disease at L4-L5 and L5-S1.

In its first assignment of error, Twin Towers argues the trial court committed reversible error when it failed to consider the expert witness testimony presented by

Daugherty and Twin Towers, and instead relied on Daugherty's testimony in granting Daugherty the right to participate in the workers' compensation fund for the additional conditions.

Twin Towers argues that the following comments by the trial court at the conclusion of the bench trial demonstrate that the trial court relied solely upon Daugherty's testimony in granting her the right to participate in the workers' compensation fund: "No, no, good testimony. All right. Well, these cases are tough. I listened to the claimant, she seemed very reasonable, seemed like she was telling the truth there what happened. And, you know, kind of conflicting doctors' reports here, but I think it fits with what she did, so I'm going to find for the claimant on both cases." We disagree.

It well-settled law that at a trial court speaks only through its journal entries and not by oral announcement of its judgment. *See State ex rel. Fogle v. Steiner*, 47 Ohio St.3d 158, 163, 656 N.E.2d 1288 (1995); *In re Adoption of Gibson*, 23 Ohio St.3d 170, 173, fn.3, 492 N.E.2d 146 (1986); *C.C.S. v. Adoption by Gentle Care*, 10th Dist. Franklin No. 14Ap-739, 2015-Ohio-2126, ¶ 13. Here, the judgment entry granting Daugherty the right to participate in the workers' compensation fund expressly provided that the trial court's decision was based on the testimony and evidence presented at the bench trial. Because the judgment entry in this case indicates the trial court considered all the evidence and concluded that Daugherty had met her burden in establishing that the additional conditions had been directly and proximately caused by her work-related injury, and the judgment entry controls over any conflicting oral statements the trial court may have made, we overrule Twin Towers' first assignment of error.

In its second assignment of error, Twin Towers argues that the trial court committed reversible error by failing to apply the substantial-aggravation standard in R.C. 4123.01(C)(4) and *Pflanz v. Pilkington LOF*, 1st Dist. Hamilton No. C-100574, 2011-Ohio-2670, in determining that Daugherty had suffered a compensable injury.

In *Pflanz*, this court held that “to be compensable, the substantial aggravation of a preexisting condition must be substantial in the sense of being considerable and in the sense of being firmly established by the presentation of objective evidence.” *Pflanz* at ¶ 18. R.C. 4123.01(C)(4) specifies the type of evidence the claimant must produce to carry its burden by requiring that the substantial aggravation “be documented by objective diagnostic findings, objective clinical findings, or objective test results.” Twin Towers argues that Daugherty failed to prove that the aggravation of her degenerative disc disease at L4-L5 and L5-S1 was substantial in either respect, and thus, the trial court erred by ruling in her favor.

At trial, Daugherty presented testimony from Dr. Carl Rafey, D.C., as well as her medical records subsequent to her workplace injury. Dr. Rafey testified that he had treated Daugherty for low back pain, stiffness, and radiating leg pain for an 18-month period following her workplace injury before ultimately referring her to Dr. Alfred Khan III, M.D., an orthopedic surgeon, for treatment. Dr. Khan treated Daugherty conservatively at first, giving her pain medication, including a series of epidural steroid injections, before recommending spinal surgery. Daugherty underwent a lumbar spinal fusion of L4-L5 and L5-S1 in 2013.

Dr. Rafey testified to a reasonable degree of medical certainty that Daugherty’s degenerative disc disease at L4-L5 and L5-S1 preexisted her workplace injury and that it had been substantially aggravated by her workplace injury.

Contrary to Twin Towers' assertions, Dr. Rafey's opinion was not solely based on Daugherty's subjective complaints, but it was also based on 2011 and 2013 MRI reports showing degenerative disc disease at the L4-L5 and L5-S1 levels, his objective findings upon physical examination that Daugherty had decreased range of motion, muscle spasms, a positive straight leg raise test, and decreased sensation, and his review of the findings in some of the medical records. Based upon our review of the record, we cannot conclude the trial court erred by concluding that Daugherty had met her burden and was entitled to participate in the workers' compensation fund for substantial aggravation of degenerative disc disease at L4-L5 and L5-S1. *See Bohl v. Cassens Transp. Co.*, 3d Dist. Seneca No. 13-11-36, 2012-Ohio-2248, ¶ 24-25 (holding that a treating physician's expert testimony that post-injury x-ray and MRI scans showing bone spurs, and claimant's declining results of range-of-motion tests were sufficient to conclude the claimant had proven substantial aggravation of the preexisting condition of cervical degenerative disc disease). Furthermore, to the extent that Twin Towers challenges the weight of the evidence, we cannot conclude the trial court lost its way because there was competent credible evidence to support its judgment. *See Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 17-21. We, therefore, overrule Twin Towers's second assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., HENDON and CUNNINGHAM, JJ.

To the clerk:

OHIO FIRST DISTRICT COURT OF APPEALS

Enter upon the journal of the court on August 3, 2016
per order of the court _____.
Presiding Judge